

COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS  
2012 SEP 28 AM 9 25  
THOMAS L. LEE  
CLERK OF THE BOARD  
OF SUPERVISORS

## 2012 CONFLICT OF INTEREST CODE BIENNIAL REVIEW REPLY FORM

Contact Person: Jean Hartley Telephone Number: 760-432-2128

Name of Agency: Escondido Union School District

Mailing Address 2310 Aldergrove Avenue. Escondido, CA 92029

This agency has reviewed its conflict of interest code and has determined that:

☒ **Amendments are necessary:** (Attach Amended Code)  
(Check all that applies)

- ☒ Include new positions (including consultants) which must be designated
- ☐ Revise the titles of existing positions
- ☐ Delete titles of positions that have been abolished
- ☐ Delete positions that manage public investments
- ☐ Revise disclosure categories
- ☐ Other \_\_\_\_\_

☐ **No amendments are necessary.** Our agency's code accurately designates all positions which make or participate in the making of governmental decisions; the disclosure assigned to those positions accurately requires the disclosure of all investments, business positions, interests in real property and sources of income which may foresee-ably be affected materially by the decision made by those designated positions; and the code includes all other provisions required by Government Code Section 87302.

Signature of Chief Executive Officer: [Signature] Date: 9/23/12

You must complete this report regardless of how recently your code was approved or amended. **Please return this report no later than October 1, 2012 to:**

Clerk of the Board of Supervisors  
(Conflict of Interest Code)  
1600 Pacific Highway, Room 402  
San Diego, CA 92101

Approved and/or authorized by the  
Board of Supervisors of the County of San Diego.  
Meeting Date: 12/4/12 Minute Order No. 20  
By: [Signature] Date: 12/14/12  
Deputy Clerk of the Board Supervisors



COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS

2012 OCT 19 PM 4 37

THOMAS J. PASTUSZKA  
CLERK OF THE BOARD  
OF SUPERVISORS

October 17, 2012

**BOARD OF EDUCATION**

Zoe Carpenter  
Joan Gardner  
Marv Gilbert  
Marty Hranek  
Linda Woods

**SUPERINTENDENT**

Jennifer L. Walters

Clerk of the Board of Supervisors  
(Conflict of Interest Code)  
1600 Pacific Highway, Room 402  
San Diego, CA 92101-2471

RE: Conflict of Interest Code Biennial Review

Dear Clerk:

On September 25, 2012, the Escondido Union School District submitted a Biennial Review Reply Form indicating that amendments to their Conflict of Interest Code were necessary. Attached is the district's amended Conflict of Interest Code, including designated employees and disclosure categories, (approved by the district's Board of Education on October 11, 2012) for your submission to the Board of Supervisors for approval.

Please do not hesitate to contact me at 760-432-2128 should you need further information or documentation.

Thank you.

Sincerely,

Jean Hartley  
Administrative Secretary  
Business Services Division

**CARILYN GILBERT  
EDUCATION CENTER**

2310 Aldergrove Ave.  
Escondido, CA 92029  
Tel (760) 432-2400  
[www.eusd4kids.org](http://www.eusd4kids.org)

**Bylaws of the Board**

COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS

BB 9270(a)

**CONFLICT OF INTEREST**

2012 OCT 19 PM 4 37

THOMAS J. PASIUSZKA

The Board of Education desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. In accordance with law, board members and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.

*(cf. 9005 – Governance Standards)*

Upon direction by the code-reviewing body, the board shall review the district's conflict of interest code in even-numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code-reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code-reviewing body. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated due to changed circumstances, such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended code shall be submitted to the code-reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing the district's conflict of interest code, the superintendent or designee shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

*(cf. 9320 – Meetings and Notices)*

Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last statement and the date of leaving office or district employment. (Government Code 87302, 87500)

*(cf. 4117.2/4217.2/4317.2 – Resignation)*

*(cf. 9222 – Resignation)*

**Conflict of Interest under the Political Reform Act**

A board member or designated employee shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the board member's or designated employee's "economic interests," unless the effect is distinguishable from the effect on the public generally or the board member's or designated employee's participation is legally required. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

**CONFLICT OF INTEREST (continued)**

A board member or designated employee makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits the district to any course of action, or enters into any contractual agreement on behalf of the district. (2 CCR 18702.1)

A board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the board shall abstain from voting on the matter. He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter. A board member with a disqualifying conflict of interest shall not be present during a closed session meeting of the board when the decision is considered and shall not obtain or review a recording or any other nonpublic information regarding the issue. (2 CCR 18702.1)

**Conflict of Interest under Government Code 1090**

Board members, employees, or district consultants shall not be financially interested in any contract made by the board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a board member has such a financial interest, the district is barred from entering into the contract. (Government Code 1090; Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469)

A board member shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code 1091.5. One such noninterest is when a board member's spouse/registered domestic partner has been a district employee for at least one year prior to the board member's election or appointment. (Government Code 1091.5)

A board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest" in the contract as specified in Government Code 1091 and if the remote interest is disclosed during a board meeting and noted in the official board minutes. The affected board member shall not vote or debate on the matter or attempt to influence any other board members to enter into the contract. (Government Code 1091)

Even if there is no prohibited conflict of interest, a board member shall abstain from voting on personnel matters that uniquely affect a relative of the board member. A board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse/registered

## **Bylaws of the Board**

BB 9270(c)

### **CONFLICT OF INTEREST (continued)**

domestic partner unless the individual is widowed or divorced.

#### **Common Law Doctrine Against Conflict of Interest**

A board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

#### **Rule of Necessity or Legally Required Participation**

On a case-by-case basis and upon advice of legal counsel, a board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies pursuant to Government Code 87101 and 2 CCR 18708.

#### **Incompatible Offices and Activities**

Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the board member's duties as an officer of the district. (Government Code 1099, 1126)

*(cf. 4136/4236/4336 – Nonschool Employment)*

#### **Gifts**

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation except as described in Government Code 89506.

A gift of travel does not include travel provided by the district for board members and designated employees. (Government Code 89506)

#### **Honoraria**

Board members and designated employees shall not accept any honorarium, which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89501, 89502)

The term honorarium does not include: (Government Code 89501)

**CONFLICT OF INTEREST (continued)**

1. Earned income for personal services customarily provided in connection with a bona fide business, trade, or profession unless the sole or predominant activity of the business, trade, or profession is making speeches
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the district for donation into the general fund without being claimed as a deduction from income for tax purposes

**CONFLICT OF INTEREST CODE OF THE  
ESCONDIDO UNION SCHOOL DISTRICT**

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with the attached Appendix specifying designed positions and disclosure categories, are incorporated by reference and shall constitute the district's conflict of interest code.

Board of Education members and designated employees shall file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories listed in the attached Appendix. The Statement of Economic Interest shall be filed with the district's filing officer and/or, if so required, with the district's code reviewing body.

Pursuant to Government Code 82019(a)(3), "designated employees" means "any officer, employee, member or consultant of any agency whose position with the agency . . . (3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." A scope of work shall determine whether certain consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the superintendent or designee.

**APPENDIX**

**Disclosure Categories**

1. **Category 1:** A person designated Category 1 shall disclose:
  - a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries, or of any land owned or used by the district.
  - b. Investments or business positions in or income from sources which are engaged in the acquisition or disposal of real property within the district, are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district, or manufacture or sell supplies, books, machinery, or equipment of the type used by the district.

**CONFLICT OF INTEREST (continued)**

2. **Category 2:** A person designated Category 2 shall disclose:
- a. Investments or business positions in or income from sources which are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs.
  - b. Investments or business positions in income from sources which manufacture or sell supplies, books, machinery, or equipment of the type used by the department which the designated person manages or directs. For the purpose of this category, a principal's department is his/her entire school.

**Designated Positions**

<u>Designated Position</u>	<u>Disclosure Category</u>
Board of Education Members	1
Superintendent of Schools	1
Assistant/Deputy Superintendent	1
Purchasing Director	1
Consultants	1
Directors	2
Coordinators	2
Network Manager	2

*Legal Reference:*

EDUCATION CODE

1006 Qualifications for holding office  
 35107 School district employees  
 35230-35240 Corrupt practices, especially:  
 35233 Prohibitions applicable to members of governing boards  
 41000-41003 Moneys received by school districts

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-10989 Prohibitions applicable to specified officers  
 1125-1129 Incompatible activities  
 81000-91014 Political Reform Act of 1974, especially:  
 82011 Code-reviewing body  
 87100-87103.6 General prohibitions  
 87200-87210 Disclosure  
 87300-87313 Conflict of interest code  
 87500 Statements of economic interests  
 89501-89503 Honoraria and gifts  
 91000-91014 Enforcement

**CONFLICT OF INTEREST** (continued)

*Legal Reference:* (continued)

PENAL CODE

85-88 Bribes

CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, *especially*:

18702.5 Public identification of a conflict of interest for Section 87200 filers

COURT DECISIONS

Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469

Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655

Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 Ops.Cal.Atty.Gen. 26 (2009)

92 Ops.Cal.Atty.Gen. 19 (2009)

89 Ops.Cal.Atty.Gen. 217 (2006)

86 Ops.Cal.Atty.Gen. 138 (2003)

85 Ops.Cal.Atty.Gen. 60 (2002)

82 Ops.Cal.Atty.Gen. 83 (1999)

81 Ops.Cal.Atty.Gen. 327 (1998)

80 Ops.Cal.Atty.Gen. 320 (1997)

69 Ops.Cal.Atty.Gen. 255 (1986)

68 Ops.Cal.Atty.Gen. 171 (1985)

65 Ops.Cal.Atty.Gen. 606 (1982)

63 Ops.Cal.Atty.Gen. 868 (1980)

*Management Resources:*

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict of Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

Bylaws

adopted: October 23, 2003

revised: October 26, 2006

revised: October 11, 2012

**ESCONDIDO UNION SCHOOL DISTRICT**

Escondido, California